

107TH CONGRESS
1ST SESSION

S. 1438

AN ACT

To authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Defense Au-
5 thorization Act for Fiscal Year 2002”.

1 (c) TREATMENT OF POSITIONS.—That section is fur-
 2 ther amended by adding at the end the following new sub-
 3 section:

4 “(c) TREATMENT OF POSITIONS.—A position estab-
 5 lished under subsection (a) may not be considered a Senior
 6 Executive Service position (as that term is defined in sec-
 7 tion 3132(a)(2) of title 5, United States Code), and shall
 8 not be subject to the provisions of subchapter II of chapter
 9 31 of that title, relating to the Senior Executive Service.”.

10 **Subtitle E—Other Matters**

11 **SEC. 3151. IMPROVEMENTS TO ENERGY EMPLOYEES OCCU-** 12 **PATIONAL ILLNESS COMPENSATION PRO-** 13 **GRAM.**

14 (a) CERTAIN LEUKEMIA AS SPECIFIED CANCER.—
 15 Section 3621(17) of the Energy Employees Occupational
 16 Illness Compensation Program Act of 2000 (title XXXVI
 17 of the Floyd D. Spence National Defense Authorization
 18 Act for Fiscal Year 2001 (as enacted by Public Law 106–
 19 398); 114 Stat. 1654A–502), as amended by section 2403
 20 of the Supplemental Appropriations Act, 2001 (Public
 21 Law 107–20), is further amended by adding at the end
 22 the following new subparagraph:

23 “(D) Leukemia (other than chronic
 24 lymphocytic leukemia), if initial occupation ex-
 25 posure occurred before 21 years of age and

1 onset occurred more than two years after initial
2 occupational exposure.”.

3 (b) ADDITIONAL MEMBERS OF SPECIAL EXPOSURE
4 COHORT.—Section 3626(b) of that Act (114 Stat. 1654A–
5 505) is amended in the matter preceding paragraph (1)
6 by inserting after “Department of Energy facility” the fol-
7 lowing: “, or at an atomic weapons employer facility,”.

8 (c) ESTABLISHMENT OF CHRONIC SILICOSIS.—Sec-
9 tion 3627(e)(2)(A) of that Act (114 Stat. 1654A–506) is
10 amended by striking “category 1/1” and inserting “cat-
11 egory 1/0”.

12 (d) SURVIVORS.—

13 (1) IN GENERAL.—Subsection (e) of section
14 3628 of that Act (114 Stat. 1654A–506) is amended
15 to read as follows:

16 “(e) SURVIVORS.—(1) If a covered employee dies be-
17 fore accepting payment of compensation under this sec-
18 tion, whether or not the death is the result of the covered
19 employee’s occupational illness, the survivors of the cov-
20 ered employee who are living at the time of payment of
21 compensation under this section shall receive payment of
22 compensation under this section in lieu of the covered em-
23 ployee as follows:

24 “(A) If such living survivors of the covered em-
25 ployee include a spouse and one or more children—

1 “(i) the spouse shall receive one-half of the
2 amount of compensation provided for the cov-
3 ered employee under this section; and

4 “(ii) each child shall receive an equal share
5 of the remaining one-half of the amount of the
6 compensation provided for the covered employee
7 under this section.

8 “(B) If such living survivors of the covered em-
9 ployee include a spouse or one or more children, but
10 not both a spouse and one or more children—

11 “(i) the spouse shall receive the amount of
12 compensation provided for the covered employee
13 under this section; or

14 “(ii) each child shall receive an equal share
15 of the amount of the compensation provided for
16 the covered employee under this section.

17 “(C) If such living survivors of the covered em-
18 ployee do not include a spouse or any children, but
19 do include one or both parents, one or more grand-
20 parents, one or more grandchildren, or any combina-
21 tion of such individuals, each such individual shall
22 receive an equal share of the amount of the com-
23 pensation provided for the covered employee under
24 this section.

1 “(2) For purposes of this subsection, the term ‘child’,
 2 in the case of a covered employee, means any child of the
 3 covered employee, including a natural child, adopted child,
 4 or step-child who lived with the covered employee in a par-
 5 ent-child relationship.”.

6 (2) URANIUM EMPLOYEES.—Subsection (e) of
 7 section 3630 of that Act (114 Stat. 1654A–507) is
 8 amended to read as follows:

9 “(e) SURVIVORS.—(1) If a covered uranium employee
 10 dies before accepting payment of compensation under this
 11 section, whether or not the death is the result of the cov-
 12 ered uranium employee’s occupational illness, the sur-
 13 vivors of the covered uranium employee who are living at
 14 the time of payment of compensation under this section
 15 shall receive payment of compensation under this section
 16 in lieu of the covered uranium employee as follows:

17 “(A) If such living survivors of the covered ura-
 18 nium employee include a spouse and one or more
 19 children—

20 “(i) the spouse shall receive one-half of the
 21 amount of compensation provided for the cov-
 22 ered uranium employee under this section; and

23 “(ii) each child shall receive an equal share
 24 of the remaining one-half of the amount of the

1 compensation provided for the covered uranium
2 employee under this section.

3 “(B) If such living survivors of the covered ura-
4 nium employee include a spouse or one or more chil-
5 dren, but not both a spouse and one or more
6 children—

7 “(i) the spouse shall receive the amount of
8 compensation provided for the covered uranium
9 employee under this section; or

10 “(ii) each child shall receive an equal share
11 of the amount of the compensation provided for
12 the covered uranium employee under this sec-
13 tion.

14 “(C) If such living survivors of the covered ura-
15 nium employee do not include a spouse or any chil-
16 dren, but do include one or both parents, one or
17 more grandparents, one or more grandchildren, or
18 any combination of such individuals, each such indi-
19 vidual shall receive an equal share of the amount of
20 the compensation provided for the covered uranium
21 employee under this section.

22 “(2) For purposes of this subsection, the term ‘child’,
23 in the case of a covered uranium employee, means any
24 child of the covered employee, including a natural child,

1 adopted child, or step-child who lived with the covered em-
 2 ployee in a parent-child relationship.”.

3 (3) REPEAL OF SUPERSEDED PROVISION.—

4 Paragraph (18) of section 3621 of that Act (114
 5 Stat. 1654A–502) is repealed.

6 (4) EFFECTIVE DATE.—The amendments made
 7 by this subsection shall take effect on July 1, 2001.

8 (e) DISMISSAL OF PENDING SUITS.—Section 3645(d)
 9 of that Act (114 Stat. 1654A–510) is amended by striking
 10 “the plaintiff shall not” and all that follows through the
 11 end and inserting “and was not dismissed as of the date
 12 of the enactment of the National Defense Authorization
 13 Act for Fiscal Year 2002, the plaintiff shall be eligible for
 14 compensation or benefits under subtitle B only if the
 15 plaintiff dismisses such case not later than December 31,
 16 2003.”.

17 (f) ATTORNEY FEES.—Section 3648 of that Act (114
 18 Stat. 1654A–511) is amended—

19 (1) in subsection (b)—

20 (A) in paragraph (1), by striking “and” at
 21 the end;

22 (B) in paragraph (2), by striking the pe-
 23 riod at the end and inserting “; and”; and

24 (C) by adding at the end the following new
 25 paragraph (3):

1 “(3) 10 percent of any compensation paid
 2 under the claim for assisting with or representing a
 3 claimant seeking such compensation by the provision
 4 of services other than, or in addition to, services in
 5 connection with the filing of an initial claim covered
 6 by paragraph (1).”;

7 (2) by redesignating subsection (c) and sub-
 8 section (d); and

9 (3) by inserting after subsection (b) the fol-
 10 lowing new subsection (c):

11 “(c) INAPPLICABILITY TO SERVICES PROVIDED
 12 AFTER AWARD OF COMPENSATION.—This section shall
 13 not apply with respect to any representation or assistance
 14 provided to an individual awarded compensation under
 15 subtitle B after the award of compensation.”.

16 (g) STUDY OF RESIDUAL CONTAMINATION OF FA-
 17 CILITIES.—(1) The National Institute for Occupational
 18 Safety and Health shall, with the cooperation of the De-
 19 partment of Energy and the Department of Labor, con-
 20 duct a study on the following:

21 (A) Whether or not significant contamination
 22 remained in any atomic weapons employer facility or
 23 facility of a beryllium vendor after such facility dis-
 24 continued activities relating to the production of nu-
 25 clear weapons.

1 (B) If so, whether or not such contamination
2 could have caused or substantially contributed to the
3 cancer of a covered employee with cancer or a cov-
4 ered beryllium illness, as the case may be.

5 (2)(A) Not later than 180 days after the date of the
6 enactment of this Act, the National Institute for Occupa-
7 tional Safety and Health shall submit to the congressional
8 defense committees a report on the progress made as of
9 the date of the report on the study under paragraph (1).

10 (B) Not later than one year after the date of the en-
11 actment of this Act, the National Institute shall submit
12 to the congressional defense committees a final report on
13 the study under paragraph (1).

14 (3) Amounts for the study under paragraph (1) shall
15 be derived from amounts authorized to be appropriated
16 by section 3614(a) of the Energy Employees Occupational
17 Illness Compensation Program Act of 2000 (114 Stat.
18 1654A–498).

19 (4) In this subsection:

20 (A) The terms “atomic weapons employer facil-
21 ity”, “beryllium vendor”, “covered employee with
22 cancer”, and “covered beryllium illness” have the
23 meanings given those terms in section 3621 of the
24 Energy Employees Occupational Illness Compensa-
25 tion Program Act of 2000 (114 Stat. 1654A–498).

1 (B) The term “contamination” means the pres-
2 ence of any material exposure to which could cause
3 or substantially contribute to the cancer of a covered
4 employee with cancer or a covered beryllium illness,
5 as the case may be.

6 **SEC. 3152. DEPARTMENT OF ENERGY COUNTERINTEL-**
7 **LIGENCE POLYGRAPH PROGRAM.**

8 (a) INTERIM COUNTERINTELLIGENCE POLYGRAPH
9 PROGRAM.—(1) Not later than 120 days after the date
10 of enactment of this Act, the Secretary of Energy shall
11 submit to the congressional defense committees a plan for
12 conducting, as part of the Department of Energy per-
13 sonnel assurance programs, an interim counterintelligence
14 polygraph program consisting of polygraph examinations
15 of Department of Energy employees, or contractor em-
16 ployees, at Department facilities. The purpose of examina-
17 tions under the interim program is to minimize the poten-
18 tial for release or disclosure of classified data, materials,
19 or information until the program required under sub-
20 section (b) is in effect.

21 (2) The Secretary may exclude from examinations
22 under the interim program any position or class of posi-
23 tions (as determined by the Secretary) for which the indi-
24 vidual or individuals in such position or class of
25 positions—